

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4865 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY DIST DEVELOPMENT OFFICER & 1 - Petitioners
Versus
B J NAIK - Respondent

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Appearance :

MR HS MUNSHAW for Petitioners : 1 - 2.

MS SHRUSHTHI THULA FOR MR YN OZA for Respondent : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 07/09/2007

ORAL JUDGMENT

1. Heard learned counsel for the parties.
2. The petitioner has challenged the order of the Gujarat Civil Service Tribunal in Appeal No. 553 of 1993 dated 19.1.1994 allowing the appeal of the respondent and setting aside the order of the Deputy District Development Officer and that of District Development Officer as Panchayat directing the reinstatement of the respondent No. 1 with full back wages under Article 227 of the Constitution of India.
3. The facts in brief deserve to be set out as under.
4. The respondent was appointed as Talati-cum-Mantri pursuant to the advertisement released in local daily news paper dated 21.12.1976. The respondent was appointed vide appointment letter dated 30.10.1979. The respondent reported for duty on 5.11.1979. Since then the respondent was discharging his duties as Talati-cum-Mantri in the petitioner Panchayat.
5. The Gujarat Panchayat Service Selection Board invited application for the post of Secretary on 20.12.1976. In the said advertisement so far as Panchmahal District was concerned, the total vacancies were 50, out of which, 14 were reserved for Scheduled Castes and 4 were reserved for Scheduled Tribes. The petitioner received an application from one Khodidas Zula on 21.11.1984 through one MLA, Panchmahals that respondent had secured appointment fraudulently by producing fake certificate stating therein that the respondent belongs to

Schedule Tribe. The inquiry was conducted and chargesheet dated 2.4.1987 came to be issued to respondent.

6. On 18.6.1987, the Taluka Development Officer, Jhalod was appointed as Inquiry Officer and on 29.8.1987, T.D.O. has submitted his report. Thereafter, on 17.9.1987, the notice for penalty was issued to respondent by petitioner No.1. The respondent approached the Civil Court and on 30.9.1988, the Civil Court has passed an order below Ex. 5 in Regular Civil Suit No. 819 of 1987 and quashed the notice dated 17.9.1987. On 19.5.1989, the Chitnish, Panchmahal district at Godhra was appointed as Departmental Enquiry Officer and he submitted his report on 26.12.1989. Thereafter, on 19.5.1990, the Assistant District Registrar of Cooperative Societies was appointed as Inquiry Officer and he submitted his report on 8.11.1990 and issued show cause notice dated 3.10.1991 to the respondent. Thereafter, the petitioner sought the advice of the Gujarat Panchayat Services Selection Committee regarding the proposed action against the respondent and the Secretary, Gujarat Panchayat Services also approved the decision of the petitioners vide his letter dated 3.3.1992 to remove the respondent from services. Thereafter, the respondent moved before the Civil Judge (JD) Godhra by filing Regular Civil Suit No. 31 of 1992 and the learned Civil Judge rejected the Civil Suit by judgment and order dated 4.8.1992. Against the said order, the respondent preferred Appeal being Appeal No. 116 of 1992 before the District Court, Panchmahals and the same was also rejected by the District Court.

Thereafter the respondent was terminated from service vide order dated 18.12.1992. The respondent has challenged the said order of termination before petitioner No. 2 and the District Development Officer was pleased to reject the application preferred by respondent vide order dated 13.9.1993. The respondent has challenged the said order by preferring an Appeal being Appeal No. 553 of 1993 before the Gujarat Civil Services Tribunal, Gandhinagar and the Tribunal by his judgment and order dated 19.1.1994 pleased to allow the appeal filed by respondent and the same is challenged in this petition under Articles 226 and 227 of the Constitution of India.

7. Shri Munshaw, learned counsel appearing for the petitioner has submitted that the petitioner has procured the employment on wrongful premise that he belongs to Scheduled Tribes though he never belonged to Schedule Tribe. The respondent has submitted his explanation as per his letter dated 22.11.1985 at Annexure-G stating that he belongs to Baxi Panch. The counsel for the petitioner has submitted that Baxi Commission was never in existence in the year 1976 and therefore, the case of the respondent in his letter dated 22.11.1985 cast serious doubt about his conduct. Shri Munshaw has candidly submitted that the Tribunal was not wrong in observing that the entire record was destroyed. The application made by respondent was not available, however, Shri Munshaw could produce the proceedings and record and register with regard to selection of the candidates, wherein against the name of the respondent, it is noted that he belongs to Scheduled Tribe. On the strength of

this document, Shri Munshaw has submitted that the order of the Tribunal is contrary to law and record and therefore, the same is required to be quashed and set aside and the petition deserves to be allowed.

8. Ms. Thula, learned counsel appearing for the respondent has submitted that this being a petition essentially under Articles 226 and 227 of the Constitution of India, the Court may not disturb the finding of fact and conclusion arrived at by the Tribunal. The Tribunal has taken into consideration all the record and proceedings of the inquiry and reasoning adopted by the Tribunal are most germane and the same is not required to be interfered with under Article 227 of the Constitution of India. The Tribunal has recorded that the resultant order of penalty is a result of the third inquiry, which was conducted without following the due procedure of law as Gujarat Panchayat Services (Disciplinary & Appeal) Rules, 1964 did not provide straightway third or second inquiry without following due procedure of law. In the instant case, the petitioners have not followed the Rules and therefore, the inquiry is illegal. Ms. Thula has submitted that from the record of the case, it is clearly established that inquiry in question was not conducted according to law and therefore, the impugned order passed by the Tribunal, who had an occasion to see the documents and after hearing the counsel for both the side passed detailed order and therefore, the same does not require to be interfered with. Ms. Thula has submitted that the Tribunal noted that the petitioner has destroyed the records of the case and therefore, the order passed by

learned Tribunal after perusing the papers available before it is not required to be interfered with. Ms. Thula has also submitted that the Tribunal has rightly held that the inquiry was vitiated. Ms. Thula has submitted that the present petition is required to be dismissed by confirming the order of the Tribunal.

9. Ms. Thula has also submitted that this Court has initially stayed the order of the Tribunal, however, the interim order was vacated and the as per the order of this Court in Civil Application No. 1308 of 1994, the petitioners were ordered to reinstate the respondent with consolidated salary of Rs.5000=00 to 6000=00 per month since 1994. Shri Munshaw has submitted that he is not aware about the salary status of the respondent.

10. This Court has heard the counsel for the parties at length and perused the records and proceedings. Following emerge from the submissions of the counsel that on 18.6.1987, the Taluka Development Officer, Talod was appointed as Inquiry Officer. On 29.8.1987, the report of Taluka Development Officer was submitted and on 17.9.1987, the notice for penalty was issued. On 30.9.1988 in Regular Civil Suit No. 819 of 1987 Godhra Court passed an order. Ultimately on 19.5.1989, Chitnish, Pachnamahal at Godhra was appointed as Departmental Inquiry Officer in view of the order passed by the Godhra Court. Said Chitnish, submitted his report on 26.12.1989, however, the Disciplinary Authority of his own did appoint Assistant District Registrar of Cooperative Societies as Inquiry Officer on 19.5.1990, who submitted his report on

8.11.1990 and second show cause notice was came to be issued on 3.10.1991 and order of dismissal was passed on 18.12.1992.

11.This Court needs to bear in mind that these are the proceedings under Article 227 of the Constitution of India as the judgment and order passed by the Tribunal in Appeal No. 553 of 1993 setting aside the order of dismissal dated 18.12.1992 passed by the Deputy District Development Officer, Panchmahal at Godhra and also the order dated 4/13.9.1993 passed by the District Development Officer, Panchmahal and ordering reinstatement of the respondent delinquent in service with immediate effect and treating him to on duty from the date of his removal till his reinstatement in service with all back wages. This order was passed on 19.1.1994.

12.The Tribunal has recorded its findings that the charge of procuring employment by false certificate cannot be said to have been proved beyond doubt as it is observed also by the concerned Inquiry Officer, who came to be appointed lastly for holding the inquiry in case of the delinquent. The tribunal has also observed in its order that the inquiry, as a result whereof, impugned orders came to be passed upon the respondent delinquent of dismissal, was itself not in consonance with the provisions of the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964. In fact, the provisions of Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964, nowhere, envisaged the initiation of fresh inquiry as it happened in the present case. It deserves to be noted at this stage

that in the instant case, as many as three inquiries were conducted. Assuming for the sake of examining that the appointment of Chitnesh was in consonance with the observation of the Civil Court made in Regular Civil Suit No. 819 of 1987, then also, what was the justification for appointing Assistant District Registrar, Cooperative Society as Disciplinary Authority has not come on record nor his appointment can ever be said to be in consonance with the provisions of the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964. The Disciplinary Authority had clearly erred in making appointment of the third Inquiry Officer without even issuing the notice to the respondent delinquent concerned. Moreover, even in the third Inquiry Officer's report, the finding had been recorded that the charge of production of forged documents namely certificate with regard to his caste cannot be said to have been proved beyond doubt. Assuming for the sake of arguments that the Tribunal, which has relied upon the Inquiry Officer's report has also taken a view that the charge of production of forged caste certificate has not been proved and if there was another view plausible, then, the register of applications indicating the delinquent to be member of Schedule Tribe was based upon the document provided by the delinquent then also, under Article 227 of the Constitution of India, this Court would not be justified in substituting the view of the Tribunal. Apart therefrom, it also deserves to be noted that the entire record was destroyed and even the application made by the delinquent respondent was not available to prove the charge against the respondent. It also deserves to be noted that the authorities did not

have copy of the alleged forged document caste certificate nor the delinquent has an application made by the respondent delinquent to indicate that he applied for the post of member of Schedule Tribe and therefore, in absence of such vital documents, the reliance upon the entry in the register maintained by the petitioner cannot be safely said to have proved the charge against the delinquent concerned. Therefore, in view of the total facts and circumstances attaining the case, this Court is of the view that no interference is called for under Article 227 of the Constitution of India in the order dated 19.1.1994 passed by the Tribunal impugned in the present proceedings.

13.In the result, the judgment and order of the Tribunal dated 19.1.1994 passed in Appeal No. 553 of 1993 is hereby confirmed and the petition deserves to be rejected and is accordingly rejected. Rule is discharged. Interim relief, if any, stands vacated. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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